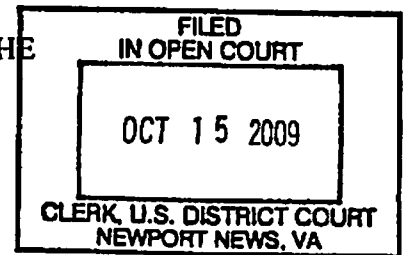


IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Newport News Division



UNITED STATES OF AMERICA

v.

ERIC SMITH
a/k/a "Capone"
a/k/a "Pone"

CRIMINAL NO. 4:08CR147

21 U.S.C. §§ 846 and 841(a)(1)
Conspiracy to Possess with Intent to
Distribute and Distribute Cocaine
and Marijuana
(Count 1)

21 U.S.C. § 841(a)(1) and (b)(C)
Distribution of Cocaine
(Counts 2, 3)

21 U.S.C. § 843
Use of Communication Facility
(Counts 4, 5, and 6)

SECOND SUPERSEDING INDICTMENT

OCTOBER 2009 at Newport News, Virginia

COUNT ONE

THE GRAND JURY CHARGES THAT:

At some point between the dates of in or about 2003, the exact date being unknown to the Grand Jury, to on or about August 7, 2008, in the Eastern District of Virginia and elsewhere, ERIC SMITH, a/k/a "Capone," a/k/a "Pone," the defendant herein and co-conspirators Sean Middleton, Percell Burrows, Francisco Ramos, Eloy Martinez, William Santiago, FB, Stacy Maddox, Ray Procise, Antwan Jordan, Ronald Stevens, Marcus Chambliss, Eric Carr, Rodney Parham, Linda Butcher, Ricky Harris, PJ and others known and unknown to the Grand Jury did

unlawfully, knowingly and intentionally combine, conspire, confederate and agree together with each other and other persons known and unknown to the grand jury to commit the following offenses against the United States:

1. To knowingly, intentionally and unlawfully possess with intent to distribute more than 5 kilograms of cocaine, a schedule II narcotic controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A)(ii).

2. To knowingly, intentionally and unlawfully distribute more than 5 kilograms of cocaine a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A)(ii).

3. To knowingly, intentionally and unlawfully Distribute and Possess with the Intent to Distribute Marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(C).

WAYS, MANNER AND MEANS OF THE CONSPIRACY

The primary purpose of the conspiracy was to make money through the possession and distribution of cocaine and marijuana in the areas of Central Virginia and Hampton Roads, Virginia, within the Eastern District of Virginia. The ways, manner and means by which the defendant and co-conspirators carried out the purposes of the conspiracy include but are not limited to the following:

1. It was part of the conspiracy that defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," and unindicted co-conspirators would and did play different roles in the conspiracy, taking upon themselves different tasks and participating in the affairs of the conspiracy through various criminal acts. Some of the roles which the defendant and co-conspirators assumed and carried out included,

among others; organizer, manager, distributor, packager, supplier, middleman and facilitator.

2. It was further a part of the conspiracy that the defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," and the unindicted conspirators were engaged in the unlawful business of possessing with intent to distribute and distributing powder cocaine and marijuana in the areas of Central Virginia and in Hampton Roads in the Eastern District of Virginia for profit. During the conspiracy, Percell Burrows, Francisco Ramos, Eloy Martinez and others supplied large quantities of cocaine which were transported from outside the Commonwealth of Virginia to the Eastern District of Virginia to unindicted conspirator FB. FB then supplied the cocaine to distributors in Central Virginia and the Hampton Roads area, including defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," PJ, Stacy Maddox, Ray Procise, Antwan Jordan, Ronald Stevens, Marcus Chambliss, Eric Carr, Rodney Parham, Linda Butcher and other co-conspirators.

3. Defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," and others arranged hotel rooms in the Petersburg area to assist FB in his cocaine distribution operations.

4. It was further part of the conspiracy that unindicted conspirator FB also supplied cocaine to unindicted conspirator PJ in the Hampton Roads area. In or about the February 2008, on two occasions defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," supplied cocaine to co-conspirator PJ.

5. It was further part of the conspiracy that the defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," and unindicted co-conspirators would and did derive substantial gross receipts from their unlawful activities.

6. It was further part of the conspiracy that the defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," and unindicted co-conspirators personally possessed and distributed powder cocaine, and possessed and distributed marijuana at locations in City of Petersburg in the Eastern District

of Virginia including but not limited to:

- a. Various hotels in the Petersburg, Virginia area.
- b. The address of 1025 South Crater Road, Apartment 2A in Petersburg, Virginia.
- c. The area of Southpark Mall in Colonial Heights, Virginia
- d. The area of 737 Kirkham Street, Petersburg, Virginia.
- e. The East Coast Gas Station located on County Drive in Prince Georges County, Virginia.
- f. The address of 598 Oakwood Circle, Petersburg, Virginia
- g. Various other locations

7. It was further part of the conspiracy that defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," and unindicted co-conspirators communicated through telecommunications devices. The co-conspirators and defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," used telephonic communications to arrange for the time and place of cocaine transactions, payments of United States currency and to assist in and further the possession with intent to distribute and the distribution of controlled substances.

8. It was further part of the conspiracy that defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," and unindicted co-conspirators, used various vehicles to transport narcotics and meet with other co-conspirators.

OVERT ACTS

In furtherance of the conspiracy and to bring about the objects and goals of the conspiracy, the defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," and the unindicted co-conspirators committed overt acts in the Eastern District of Virginia, and elsewhere, including but not limited to the following:

1. At various times from approximately February 23, 2004 through in or about October 26, 2005, the exact dates being unknown to the Grand Jury, in Petersburg, Virginia, co-conspirator FB used the apartment of 1025 South Crater Road to store, package and distribute quantities of cocaine and marijuana for distribution to defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," and other co-conspirators.

2. At various times from approximately February 23, 2004 through in or about October 26, 2005, the exact dates being unknown to the Grand Jury, in Petersburg, Virginia, defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," drove to the location 1025 South Crater Road, Petersburg, Virginia and purchased quantities from 125 grams of cocaine to amounts of 500 grams or more of cocaine.

3. At various times from approximately February 23, 2004 through in or about October 26, 2005, the exact dates being unknown to the Grand Jury, in Petersburg, Virginia, defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," drove to the location 1025 South Crater Road, Petersburg, Virginia and provided United States currency to co-conspirator FB as payment for cocaine earlier obtained on consignment.

4. On or about May 4, 2005, in Richmond, Virginia, co-conspirator Francisco Ramos traveled from San Antonio, Texas to meet with FB and co-conspirators related to the distribution of cocaine.

5. On or about October 13, 2005, in Richmond, Virginia, co-conspirator Eloy Martinez traveled from San Antonio, Texas to meet with FB and co-conspirators related to the distribution of cocaine.

6. On or about November 9, 2005, in Richmond, Virginia, co-conspirator Francisco Ramos traveled from San Antonio, Texas to meet with FB and co-conspirators related to the distribution of cocaine.

7. On or about December 19, 2005, in Richmond, Virginia, co-conspirators Francisco Ramos and Eloy Martinez traveled from San Antonio, Texas to Richmond, Virginia to meet with FB and co-conspirators related to the distribution of cocaine.

8. At various time in 2004 and 2005, the exact dates being unknown to the Grand Jury, in Petersburg, Virginia, un-indicted coconspirator Stacey Maddox delivered quantities of cocaine ranging from 62 grams to 125 grams of cocaine to defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone."

9. On or about February 4, 2006, in Richmond, Virginia, co-conspirators Francisco Ramos traveled from San Antonio, Texas to Richmond, Virginia to meet with FB and co-conspirators related to the distribution of cocaine.

10. At various times from approximately November 1, 2005 through in or about August 2008, the exact dates being unknown to the Grand Jury, in Petersburg, Virginia at the location of 598 Oakwood Circle, Petersburg, Virginia, defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," purchased from 125 to 500 grams or more of cocaine from FB.

11. At various time in or about 2005 to in or about November 23, 2008, the exact dates being unknown to the Grand Jury, in Petersburg, Virginia, defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," distributed quantities of cocaine ranging from 28 grams to 62 grams to un-indicted coconspirator Ricky Harris.

12. At various times from on or about February 10, 2008 through February 12, 2008, in Prince Georges County and Colonial Heights, Virginia, defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," and unindicted co-conspirator PJ were in telephonic contact related to the purchase of cocaine powder.

13. On or about February 11, 2008, in Prince Georges County, ERIC SMITH, a/k/a "Capone," a/k/a "Pone," distributed a quantity of cocaine to co-conspirator PJ.

14. On or about February 12, 2008, in Colonial Heights, Virginia ERIC SMITH, a/k/a "Capone," a/k/a "Pone," distributed a quantity of cocaine to co-conspirator PJ.

15. At various times from on or about April 8, 2008 through August 7, 2008, defendant ERIC SMITH, a/k/a "Capone," a/k/a "Pone," and unindicted co-conspirator FB spoke telephonically with each other to inquire about purchasing cocaine and marijuana, to update each other regarding others involved in cocaine trafficking and to discuss the status of cocaine distribution in the Petersburg area.

(All in violation of Title 21, United States Code, Sections 846, and 841(a)(1)).

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 11, 2008, within the Eastern District of Virginia, ERIC SMITH, a/k/a "Capone," a/k/a "Pone," the defendant herein, did unlawfully, knowingly and intentionally distribute approximately 14 grams of a mixture and substance containing a detectable amount of cocaine a Schedule II narcotic controlled substance.

(All in violation of Title 21, United States Code, Section 841(a)(1) and (b)(C) and Title 18, United States Code Section 2).

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COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 12, 2008, within the Eastern District of Virginia, ERIC SMITH, a/k/a "Capone," a/k/a "Pone," the defendant herein, did unlawfully, knowingly and intentionally distribute approximately 28 grams of a mixture and substance containing a detectable amount of cocaine a Schedule II narcotic controlled substance.

(All in violation of Title 21, United States Code, Section 841(a)(1) and (b)(C) and Title 18, United States Code Section 2).

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COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 10, 2008, at approximately 6:19 p.m., in the Eastern District of Virginia, the defendant, ERIC SMITH, a/k/a "Capone," a/k/a "Pone," did unlawfully, knowingly and intentionally use a communication facility that is, a telephone assigned the number 804-931-9740 in facilitating the commission of a crime, to wit: conspiracy to possess with intent to distribute and distribute cocaine as set forth in Count 1 of the Second Superseding Indictment and the distribution of cocaine as set forth Count 2 of the Second Superseding Indictment.

(All in violation of Title 21, United States Code, Section 843(b)).

COUNT FIVE

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 11, 2008, in the Eastern District of Virginia, the defendant, ERIC SMITH, a/k/a "Capone," a/k/a "Pone," did unlawfully, knowingly and intentionally use a communication facility that is, a telephone assigned the number 804-931-9740 in facilitating the commission of a crime, to wit: conspiracy to possess with intent to distribute and distribute cocaine as set forth in Count 1 of the Second Superseding Indictment and Count 2 of the Second Superseding Indictment.

(All in violation of Title 21, United States Code, Section 843(b)).

COUNT SIX

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 12, 2008, in the Eastern District of Virginia, the defendant, ERIC SMITH, a/k/a "Capone," a/k/a "Pone," did unlawfully, knowingly and intentionally use a communication facility that is, a telephone assigned the number 804-931-9740 in facilitating the commission of a crime, to wit: conspiracy to possess with intent to distribute and distribute cocaine as set forth in Count 1 of the Second Superseding Indictment and Count 3 of the Second Superseding Indictment.

(All in violation of Title 21, United States Code, Section 843(b)).

Pursuant to the Criminal Justice Act,
the original of this page has been filed
under seal in the Clerk's Office.

UNITED STATES v. ERIC SMITH, a/k/a "Capone," a/k/a "Pone,"
4:08CR147

A TRUE BILL: REDACTED COPY

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